## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

HAROLD STEPHEN DYKES,	)	
Plaintiff,	)	
v.	) No. 4:07-CV-733 CA	\S
JOETTA MITCHELL, et al.,	)	
Defendants.	)	

## **ORDER**

This matter is before the Court on the response filed by defendants Mitchell, Ball-Tyler and Payne to the Memorandum and Order of February 26, 2008 (Doc. 50). The Memorandum and Order directed these defendants and their attorney to file a written statement showing justification under Federal Rule of Civil Procedure 37(a)(5)(A) why the Court should not order them to pay plaintiff's reasonable expenses, including attorney's fees, incurred in connection with the filing of his motion to compel.

Assistant City Counselor Raymond Flojo responds that the defendants had no role in the delay in providing the initial disclosures, and apologizes to the Court and the parties. Mr. Flojo notes that the motion to compel was withdrawn, and asserts that the parties were not prejudiced and that he did not willfully or maliciously withhold documents. Mr. Flojo cites a Tenth Circuit case which holds that where a motion to compel was withdrawn, as here, there can be no award of fees under Rule 37. See Dataq, Inc. v. Tokheim Corp., 736 F.2d 601 (10th Cir. 1984). Although there is little case law on this point, and apparently none in the Eighth Circuit, the Court did not find any contrary authority.

The Court will therefore not impose a monetary sanction on the defendants or on Mr. Flojo, but strongly urges Mr. Flojo to be more attentive to deadlines in this matter in the future.

SO ORDERED.

**CHARLES A. SHAW** 

UNITED STATES DISTRICT JUDGE

Dated this 13th day of March, 2008.